

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
DETROIT DIVISION**

JOHN CHAMBERLAIN, Individually and on Behalf of All Others Similarly Situated,	) Civil Action No. 2:08-cv-13451-PDB-SDP
	)
	<u>CLASS ACTION</u>
Plaintiff,	)
vs.	)
	)
REDDY ICE HOLDINGS, INC., <i>et al.</i> ,	)
	)
Defendants.	)
	)
	)

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**MOTION TO DISMISS PLAINTIFFS'  
CONSOLIDATED CLASS ACTION COMPLAINT**

Defendants Reddy Ice Holdings, Inc. (“Reddy”), William P. Brick (“Brick”) and Steven J. Janusek (“Janusek”) respectfully submit this Motion to Dismiss Plaintiffs’ Consolidated Class Action Complaint (the “Complaint”) pursuant to Rules 12(b)(6) and 9(b) of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995 (“PSLRA”). In support of their Motion, Defendants state as follows:

1. As a matter of law, the Complaint should be dismissed because Plaintiffs have not pled facts with particularity that show a violation of securities laws.
2. First, Plaintiffs have not pled any actionable misstatement by Defendants because they have not shown that Reddy’s fully-disclosed transaction with Mountain Water Ice (or any other alleged conduct) was unlawful, and they have not pled facts showing that Defendants had a duty to disclose the legal risks of their conduct to the market. *See Indiana State Dist. Council Of Laborers And Hod Carriers Pension And Welfare Fund v. Omnicare, Inc.*, 583 F.3d 935, 947 (6th Cir. 2009). Defendants did not owe a duty to disclose because, among other things,

Plaintiffs cannot show that Defendants' statements of legal compliance were known to be false at the time they were made. *Id.*

3. Second, Plaintiffs have not pled facts sufficient to create an "strong inference" of scienter that is "at least as compelling as any opposing inference one could draw from the facts alleged." *Tellabs Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 320 (2007). Again, the Complaint does not plead facts showing that any of Defendants knew their conduct to be illegal at the time the challenged public statements were made to investors. See *PR Diamonds, Inc. v. Chandler*, 364 F.3d 671, 684 (6th Cir. 2004). Plaintiffs cannot show scienter through evidence of motive and opportunity because they do not allege that the Individual Defendants stock sales were "unusual or suspicious," or that the Individual Defendants exhibited any other indicia of scienter recognized by courts in this Circuit. *Grillo v. Tempur-Pedic Intern., Inc.*, 553 F. Supp.2d 809, 820-21 (E.D. Ky. 2008).

4. Third, Plaintiffs have not linked any stock drop to a revelation that Reddy had made false and misleading statements, and thus, they have failed to plead loss causation. Although Plaintiffs allege that Reddy's stock price fell after investigations were revealed to the market, the investigations have not resulted in a finding of misconduct, and Defendants' prior statements have not otherwise been revealed to be inaccurate. As a matter of law, the mere disclosure of investigations is insufficient to support a showing of loss causation. See *In re Avista Corp. Sec. Litig.*, 415 F. Supp. 2d 1214, 1221 (E.D. Wash. 2005).

5. Pursuant to Local Rule 7.1, counsel for Defendants attempted to confer with counsel for Plaintiffs on December 17, 2009 regarding the relief requested in this motion. Counsel for Defendants was told that the three attorneys identified as lead counsel for Plaintiffs were all unavailable. Counsel for Defendants left a message, and did not receive a return

telephone call prior to the filing of this Motion. Accordingly, Defendants presume that this motion is opposed.

Wherefore, Defendants pray that the Court enter an order dismissing with prejudice Plaintiffs' Consolidated Class Action Complaint, and awarding such other relief to which they may show themselves entitled.

Dated December 17, 2009.

/s/ James R. Nelson  
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